CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, CHENNAI

Customs Appeal No.40759 of 2014

(Arising out of Order in Appeal C.Cus.No.24/2014 dated 15.01.2014 passed by the Commissioner of Customs, (Appeals) 60, Rajaji Salai, Custom House, Chennai-600 001.)

Shri Ranjith Sundaramurthy, …Appellant
Sundara Bhavan,
23, M.G.Road
Bangalore – 560 001.

Vs.

The Commissioner of Customs (Import) …Respondent
Customs House,
No.60, Rajaji Salai,
Chennai – 600 001.

APPEARANCE:

Shri Hari Radhakrishnan, Advocate for the Appellant
Shri N. Sathyanarayanan, AC (AR) for the Respondent

CORAM:

Hon'ble Shri P. Dinesha, Member (Judicial)
Hon'ble Shri M. Ajit Kumar, Member (Technical)

Final Order No.40483/2024

Date of Hearing : 28.11.2023
Date of Decision: 24.04.2024

Per P. Dinesha

Brief facts which are relevant for our consideration are that, the appellant had imported a black Nissan GTR car from Japan through an agent located at UK, namely Mrs., Hiperformance cars, declaring the cost of the car at US dollars 63,000. Upon import of the same on arrival in India, the appellant filed a bill of entry dated 03.11.2008, which was subjected to examination and the proper officer of customs at the time of import assessed the value of

the car at ₹32, 06, 952. It is also an admitted fact that the appellant had availed concessional duty benefit in terms of serial number 344(2) of Notification No.21/2002–Cus dated 01.03.2002. The car was thus assessed and permitted to be cleared upon the appellant remitting the duty at the rate of 60%.

2. It appears that there was an investigation into the imports of high-end cars, by the officers of DRI, Ahmedabad. During the course of investigation, statements from Mr.Alberto Bestonso, appeared to have been the recorded, who is shown to have assisted the appellant in procuring the car in question, who was in the business of repair and service of cars in Mumbai and also in the business activity of procuring high-end foreign cars with the assistance of his brother at UK namely, Lorenzo Bestonso. A show-cause notice was thereafter issued to the appellant, alleging collusion with Alberto resulting in the alleged under-valuation of the imported car, on which the appellant had availed wrongful benefit of the customs notification supra since, according to the authority, the car was not a new one but a used one. It appears that the appellant filed his reply rebutting the allegations made out in the show cause notice, but however, the original authority having considered the reply of the appellant in adjudication, passed the Order in Original No.20283/2013 dated 15.02.2013, thereby confirming the differential duty along with

interest and penalties, which were proposed in the show cause notice. Thereafter, it appears that the appellant filed an appeal before the first appellate authority, but however, the first appellant authority having not given substantial relief to the appellant, the present appeal has been filed before this Forum.

3. Short points that arise for our consideration are "(i) whether the revenue authorities are correct in redetermining the assessable value of the car imported by the appellant, thereby demanding the differential duty along with interest, and (ii) whether the appellant is liable to be visited with penalties under Sections114A & 114AA of the Customs Act, 1962?"

4. Shri Hari Radhakrishnan, Ld. Advocate appeared for the appellant and Shri N. Sathyanarayanan, Assistant Commissioner, appeared for the department.

5. Having heard both sides, we have also carefully perused the orders of both the authorities below and the documents filed along with the appeal memo.

5.1 We find from the Order-in-Original that the adjudicating authority has referred to the website of the car manufacturer, internet value, etc. to determine the assessable value of the car which was imported. Further, the Adjudicating Authority has also referred to the statement of Alberto, but he has not considered the crucial fact that said Alberto had retracted his

statement upon his production before the magistrate's court. Based on the rate obtained from internet, the Original Authority had fixed the assessable value which was not accepted in toto by the first appellate authority himself. The first appellate authority has thus, reduced the assessable value and vide impugned Order-in-Appeal has directed for re-determination of the differential duty. We find from the appeal record, as well as upon hearing both sides, that the revenue has accepted the said directions of the first appellate authority without challenging the same before this Forum.

6. The first appellate authority, while ordering the re-determination of the assessable value, has *inter alia* held that the imported vehicle was undisputedly new, which finding has again been accepted by the revenue without challenging the same. In the impugned order, the first appellate authority has referred to an alleged e-mail and an alleged original sale invoice raised by the Japanese dealer on the UK dealer, which according to the first authority, justify the fixing of assessable value at ₹49, 84, 163. Further, the Ld. first appellate authority has held that since the vehicle is held to be a new one, the same would also entitle the appellant for concessional rate of BCD.

7. The bigger question, therefore is, when the appellant declared the assessable value which is not

accepted by the revenue, it is then for the revenue to bring out through investigation/records of the buyer or the seller or the dealer as to whether there was any flow of consideration over and above the declared value by the appellant. Apparently, no such exercise seems to be done as nothing is placed before us, rather reliance is solely placed on an e-mail correspondence obtained, not by the appellant but by the DRI itself.

8. The other aspect which perhaps influenced the Original Authority for computing/re-determining the assessable value in terms of Rule 3 read with Rule 9, was the value at which the car was allegedly purchased by M/s. Hiperformance cars, UK at USD 91, 937 [8,900,000 Yen converted into USD]. To this, an element of profit/commission/brokerage was added since revenue assumed that M/s. Hiperformance cars had in turn sold the same to the appellant, at a much lesser value, which according to the Adjudicating Authority was unexpected, since no prudent businessman would like to sell the goods at the lesser invoice price than at which the goods was purchased. The appellant has not rebutted the same but has only adhered to the declared price which he has claimed to have paid only that much.

8.1. We have seen both the invoices, one which was raised on the Broker at UK by the Japanese dealer and the other one which was raised by the UK Broker on

the appellant; both are for two different cars; one refers to Ultimate Silver colour car carrying an invoice amount of 8,900,000 Yen and the other refers to a Black colour car carrying an invoice amount of 63,000 USD. That apart, invoice raised by the Japanese dealer is dated 18.08.08, but the invoice raised by the UK dealer and the appellant is 30.06.08 which is much before the date of even purchase by the UK dealer, hence, there has been much ado about nothing insofar as the invoices are concerned and therefore, the alleged difference in the purchase value by the appellant as made out in the Order-in-Original which was upheld in the impugned order lacks any merit.

9. We reiterate that it was the revenue, which alleged irregularities/under-valuation and hence, it was incumbent upon the revenue to prove its case. But however, other than uncorroborated e-mail and two different invoices, no documentary evidence is furnished before us by the revenue, in support. Hence, we cannot agree with the stand of the revenue which lacks merit, for which reason the impugned order becomes unsustainable. In the result, we set aside the impugned order and allow the appeal with consequential benefits, if any, as per law.

(Pronounced in open court on 24.04.2024)

sd/-
(**M. AJIT KUMAR**)
Member (Technical)

sd/-
(**P. DINESHA**)
Member (Judicial)

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